

IN THE COURT OF APPEALS OF IOWA

No. 9-885 / 09-1429
Filed November 25, 2009

**IN THE INTEREST OF R.M. and J.B.-C.,
Minor Children,**

**B.M.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Timothy J. Tupper, Davenport, for appellant mother.

Jack Dusthimer, Davenport, for father of R.M.

Brenda Drew-Peebles, Davenport, for father of J.B.-C.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Gerda C. Lane,
Assistant County Attorney, for appellee State.

Carrie Coyle, Davenport, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A mother appeals from the order terminating her parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

B.C. is the mother of A.H., born June 1995; J.B.-C., born April 2003; and R.M., born September 2006.¹ The mother has a history of substance abuse, alcohol abuse, and mental illness. She has been diagnosed with post-traumatic stress disorder, emotional intensity disorder, and anxiety, and she has been prescribed medication for her illnesses.

In approximately 2005, the mother began a relationship with D.M., R.M.'s father.² D.M. has a history of domestic abuse. In 2006 and early 2007, police were called numerous times due to violence between the mother and D.M.

The children came to the attention of the Iowa Department of Human Services (Department) on March 24, 2007, after it was reported that the mother and D.M. were constantly fighting in front of the children and the police had been called to their home four times in the past week. The abuse report was determined to be founded by the Department, and a case plan was implemented. The mother and D.M. were offered services, but D.M. refused to participate in services and announced he no intention of quitting his substance abuse or drinking.

¹ This appeal concerns only the termination of the mother's parental rights to J.B.-C. and R.M.

² D.M. and J.B.-C.'s fathers have not appealed from the termination of their parental rights.

After the case was opened, the mother and D.M. initially stopped seeing one another. However, their separation was short-lived. In April 2007, the mother was arrested for trespass after she pushed her way into the home of D.M.'s friend when D.M. was there. A safety plan was initiated by the Department, and the mother was to stay away from D.M. and D.M.'s friends. The mother was approved for placing the children in protective daycare, and the children were allowed to remain in the mother's care. On October 4, 2007, following a stipulation by the parties, the juvenile court adjudicated the children to be children in need of assistance (CINA).

Despite the safety plan's requirement that the mother not have contact with D.M., the mother continued having contact with D.M. though most of the case. The mother was also inconsistent with services. In March 2008, the mother agreed to voluntarily place the children with her maternal aunt after repeatedly violating the safety plan by exposing the children to D.M., who continued to refuse to cooperate with services. Even after the children were removed, the mother continued to have contact with D.M.

The mother then agreed to have another substance abuse evaluation, start domestic violence counseling, continue parenting sessions and visitation with her children, learn how to develop healthy relationships, and end all contact with D.M. However, the mother admitted to spending time with D.M. in May 2008. The mother's employment was terminated in early May. Following an evaluation, it was recommended the mother attend an intensive outpatient treatment program. The mother then entered an outpatient treatment program at the end of May.

The mother's aunt and uncle determined they were unable to keep the children full time for a long time span. The aunt's sister-in-law and husband agreed to help out, and the parties agreed the children would live with the relatives full time after the school year ended. Following a contested review hearing and modification of disposition hearing, the district court on May 29, 2008, ordered that the children be placed in the relatives' care pursuant to the voluntary placement agreement between the mother and the Department. The court determined the modification was necessary due to the mother's repeated violation of the safety plan by her continuing to expose the children to D.M. on almost a daily basis, as well as joint parental substance abuse and the continuing history of violence between the mother and D.M.

The mother admitted to drinking in June, but she successfully graduated from the outpatient treatment program on July 8, 2008. In August, the mother had contacts with D.M., including a physical altercation between the mother and D.M. The mother admitted to drinking alcohol the night of the altercation, and she sought out a protection order against D.M. The mother's therapist terminated counseling services with the mother in mid-August due to the mother cancelling and rescheduling appointments repeatedly.

The mother admitted she may not have always been honest about her alcohol issues in the past, and she admitted she may need inpatient treatment. She admitted to drinking on September 14, 2008. The mother was referred to Hightower Place, an inpatient substance abuse treatment in a group home setting, and she began treatment on September 17, 2008. Following a review hearing, the juvenile court on November 7, 2008, entered its review order finding

that although the mother appeared to be complying with the substance abuse treatment program, her compliance with services was only a little better than it had been prior to her placement at Hightower Place. The court found the mother was not a dependable reporter and had been deceptive and deceitful. The court further found the mother was unreliable in maintaining visits and that the mother and D.M.'s relationship remained volatile and violent. The court noted that the mother had obtained a no-contact order against D.M. the week of October 20, 2008, but thereafter initiated phone contact with him once again. The court ordered the mother to comply with the case plan and set the matter for permanency.

The mother obtained employment in mid-November but quit after a few weeks. She obtained employment again in January 2009, but she was let go in late February or early March due to attendance issues.

The mother graduated from Hightower Place on February 9, 2009. After leaving, the mother only attended aftercare five or six times. The mother admitted she began a relationship with a man she met from AA and that the relationship turned abusive early on. After that relationship ended, the mother became involved with another man who was her drinking partner before entering Hightower Place. The mother admitted the man was a drinker but claimed that the man would not drink around her anymore.

Following a permanency hearing, the juvenile court on April 30, 2009, ordered the State file a petition to terminate the mother's parental rights. The court found the mother was still involved in an unhealthy relationship with a past-using partner, had lost her job, and had broken ties with her sponsor. The court

found the mother continued to be inconsistent with services and that the children could not be safely returned to her care.

After the permanency hearing, the mother relapsed by drinking alcohol. The mother was evicted on May 1, 2009, and was accepted into the Freedom Homes Ministries in Davenport, Iowa. She was then asked to leave the program in June due to her attitude and causing drama with the staff. She then moved in with her maternal aunt and uncle.

On June 4, 2008, the State filed petitions to terminate the mother's paternal rights to R.M. and J.B.-C. On June 11, 2009, the mother entered a substance abuse treatment center. The mother was recommended to attend the dual diagnosis group, the relapse prevention group, and the healthy relationship group. The mother missed several groups, and on July 14, 2009, the mother tested positive for marijuana.

A contested termination of parental rights hearing was held on August 27 and September 2, 2009. The mother testified that she had been sober for four and a half months at the time of trial. However, the mother testified her last visit to her therapist was in July and that she had missed three appointments. The mother further testified that at the time of trial she had missed her outpatient groups and AA meetings for two weeks. The mother admitted that two days before trial, the police were called concerning issues with her current relationship, specifically that her boyfriend had come home intoxicated and asked her to leave. He called the police and told the officers when they arrived he did not know the mother, and the officers asked the mother to leave. The mother

admitted she had been previously unemployed, but testified she had obtained employment the day of the trial.

The Department's caseworker testified that the mother had been inconsistent with services and in addressing her substance abuse issues throughout the pendency of the case. The worker testified that the mother was most consistent with her visitation of R.M. and J.B.-C., and that the mother and R.M. and J.B.-C. were bonded. The worker further testified that the children were thriving in the home of the relatives, but the relatives had decided they could not adopt R.M. or J.B.-C. The worker testified that other relatives were being considered as a potential placement for the children. However, the worker did not believe the children could be safely returned to the mother's care due to the mother's inconsistency with services and her substance abuse history.

On September 4, 2009, the juvenile court entered its order terminating the mother's parental rights to R.M. and J.B.-C. pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (f) (2009). The mother now appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, the mother argues termination of her parental rights was not in the best interests of the children. The State argues that error was not preserved on this issue. We will bypass the State's error preservation concerns and proceed to the merits. See *State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

As stated above, our primary concern in termination cases is the best interests of the children. *A.S.*, 743 N.W.2d at 867. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to the parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

The children first came to the attention of the Department in March 2007, and the children have been out of the mother's care since March 2008. By the time of the termination hearing in August 2009, the children had been removed from the mother's care for more than fourteen months. Despite the offer of

services and substance abuse treatment, the mother continued to abuse substances and entered into inappropriate relationships. During the six months prior to the termination hearing, the mother consistently failed to address her substance abuse and mental health issues, and she twice relapsed on drugs and alcohol.

It is not possible to have confidence that this mother will be able to maintain sobriety and a commitment to change.

[A] good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted). We are sympathetic to the mother's struggle to maintain sobriety, and recognize that many are able to successfully free themselves from the tenacious grip of addiction. Yet the interests in permanency for the children must prevail over the mother's uncertain battle with alcohol. *See id.* We have repeatedly followed the principle that the statutory time line must be followed, and children should not be forced to wait for the parent to overcome their addiction. *Id.* The mother's frequent relapses during the pendency of this case along with her continued inconsistency with services and inappropriate relationships evidence the children will not be able to return to the mother's custody within a reasonable period of time considering the children's age and need for a permanent home. *See* Iowa Code §§ 232.116(1)(f), (h).

“When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child[ren] deserve[] to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents.” *Id.*

We recognize that the mother and R.M. and J.B.-C. have a close bond. This bond, however, is offset by the urgent need to establish permanency for the children. The best interests of the children, particularly the children’s safety, outweigh the desire to preserve the parent-child bond. We conclude termination of the mother’s parental rights was in the children’s best interests.

IV. Conclusion.

Because we conclude that termination of the mother’s parental rights was in the children’s best interests, we affirm the judgment of the juvenile court.

AFFIRMED.